



# LIFEBEGINS

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Washington State Bar Association  
Senior Lawyers Section

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## Save the Date!

### Senior Lawyers Section 2010 Annual Meeting & CLE Seminar

Friday, April 16, 2010  
Marriott, Sea-Tac Airport

Another informative and entertaining seminar is coming your way. You can bank CLE credits, meet old friends, and enjoy the day while attending this CLE. Despite the rising costs, we have held the cost to \$150 for Section members and \$170 to join the Senior Lawyers Section and attend the Seminar. If there are sufficient registrations, we plan to open this CLE to all other lawyers for \$250. This remains one of the best CLE bargains anywhere. The cost includes the seminar, written materials, an excellent lunch, parking and a social hour at the end of the session.

We have arranged a distinguished lineup of presenters, including Washington Supreme Court Justice Charles Johnson, Gonzaga Law School Dean Earl Martin, Scott Osborne (real property), Barbara Harper (Lawyers Assistance Program), Donald Querna (estate conflicts of interest) as well as other speakers on matters of interest.

Please mark your calendar for April 16 and watch for the registration form either in the mail or at [www.wsbacl.org/seminars.php](http://www.wsbacl.org/seminars.php).

## \$10,000 Grant to Plymouth Housing Group – Final Report

In the spring of 2008, the WSBA Senior Lawyers Section awarded a \$10,000 grant to Plymouth Housing Group, PHG. Between March 2008 and March 2009, these funds have helped to support the development and offering of quarterly legal clinics to PHG tenants residing at the Langdon and Anne Simons Senior Apartments in Seattle.

The main goal of the clinics is to help residents address outstanding legal matters. Through the collaborative efforts of the King County Prosecuting Attorney's Office and the King County Bar Association's Homeless Legal Clinics, *pro bono* legal services were provided to 33 individuals over a one-year period.

For more details about the project and its outcomes, please see the Plymouth Housing Group Legal Clinics Final Report. <http://wsba.org/lawyers/groups/seniorlawyers/default1.htm>.

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*Editor's note: This article originally appeared in the Summer 2009 newsletter of the WSBA Real Property, Probate, and Trust Section. It appears with the permission of the author.*

## Litigating the Department of Revenue's Estate Tax Regulations on Pre-Enactment Federal QTIP Property

by Scott A.W. Johnson – Stokes Lawrence, P.S.

Jim Bracken died in 1984 and his executor made a federal Qualified Terminable Interest Property ("QTIP") election<sup>1</sup> for a marital trust established under his Will for the benefit of his wife, Sharon. No Washington QTIP election was made because it was not possible to make one – Washington law did not allow or provide for QTIP elections. Before Sharon died, in 2006, the Washington legislature enacted a new stand-alone estate tax. This tax is to be imposed on "every transfer of property located in Washington."<sup>2</sup> The new state estate tax act created the ability to make a state-only QTIP election.<sup>3</sup> It also directed the Washington State Department of Revenue ("DoR") to adopt implementing regulations.<sup>4</sup> In the initial regulations, the calculation of the Washington taxable estate disregarded any federal QTIP property and included only Washington state QTIP property.<sup>5</sup> Like many estates, relying on the those regulations and the statutory provisions, and using DoR's own tax form, the executor of Sharon's estate excluded the federal QTIP property in calculating the Washington state taxable estate.

In November 2008, DoR filed findings in the Sharon Bracken estate proceedings claiming that additional state estate tax was due. Contrary to its own regulations, DoR sought to include in Sharon's Washington taxable estate the property in Jim's marital trust for which no Washington state QTIP election had been made. DoR's position is that property held in federal QTIP trusts that were established before enactment of the new state estate tax are includable in the Washington taxable estate. In February 2009, DoR changed its regulations in an attempt to make them more consistent with the position advanced in its Bracken estate findings. Under the amended regulations federal QTIP property is now excluded from the Washington taxable estate *only* if the spouse who created the marital trust died on or after May 17, 2005, the effective date of the new state estate tax act. In contrast, if the first spouse died before that date, the QTIP property is to be included in the Washington taxable estate (referred to herein as pre-enactment federal QTIP property). Sharon's estate objected to DoR's findings and, along with two other similarly situated estates, is now challenging in court DoR's efforts to impose state estate tax on pre-enactment federal QTIP property.

**Washington's Estate Tax.** In 1981, Washington voters passed an initiative repealing the state inheritance tax and limiting the state estate tax to an amount equal to the federal credit.<sup>6</sup> After the initiative, the state estate tax was received not as a separate tax, but through a tax credit established

by federal law.<sup>7</sup> The credit reduced the estate's total federal estate tax due and transferred the amount of the credit to the state. This is commonly called a "pickup tax."<sup>8</sup> In 2001, Congress enacted legislation to end the federal estate tax and repeal federal estate tax credits, essentially ending the estate tax revenue-sharing between the federal government and the states.<sup>9</sup> Washington state sought to avoid the phasing out of the credits by tying the Washington estate tax to the federal law in effect on January 1, 2001. In *Estate of Hemphill v. Department of Revenue*, the Supreme Court found this approach to be improper and held that, under the then-existing state law, the state estate tax was limited to the amount of the federal estate tax credit that was actually available.<sup>10</sup> When the federal state death tax credit was phased out, the State's pick-up tax was likewise phased out and ultimately eliminated.<sup>11</sup>

In response to the prospect of no estate tax revenue, Washington's legislature hurriedly adopted a new stand-alone estate tax that was separate and distinct from the federal estate tax. This tax became effective, and is applicable to, estates of decedents dying on or after May 17, 2005.<sup>12</sup> Washington's new estate tax act authorizes state-only QTIP elections for marital trusts, much like the federal QTIP election.<sup>13</sup> The Washington and federal QTIP elections, however, are separate and independent. For example, an estate's executor can make QTIP elections of differing amounts for Washington state purposes and federal purposes.<sup>14</sup>

**DoR's Implementing Regulations.** The legislature directed DoR to adopt rules to carry out the effect of the new estate tax act.<sup>15</sup> These rules became effective on April 9, 2006, and by the terms of RCW 83.100.200 have the force and effect of law.<sup>16</sup> Under the regulations, the amount of Washington estate tax is based on the size of the "Washington taxable estate." The "Washington taxable estate" begins with the "federal taxable estate."<sup>17</sup>

The regulations originally adopted by DoR required certain adjustments be made to the "federal taxable estate" to determine the "Washington taxable estate." One of the adjustments was to include in the "Washington taxable estate" the value of a trust, or a portion of a trust, of which the decedent was the income beneficiary *and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047* (emphasis added).<sup>18</sup> Another adjustment required by the original regulations was the exclusion from

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the "Washington taxable estate" of the value of property included in the federal taxable estate as the result of a prior federal QTIP election.<sup>19</sup> Thus, pursuant to the Washington statute and the regulations, the only QTIP property that was includable in the Washington taxable estate was property for which the executor of the first spouse to die had previously made a Washington state QTIP election.

Effective February 22, 2009, DoR amended the regulations regarding the calculations for determining the "Washington taxable estate."<sup>20</sup> The only change made by the amendment is the inclusion of the underlined text in WAC 458-57-105(3)(q)(vi) and 458-57-115(2)(d)(vi):

"Washington taxable estate" means the "federal taxable estate" ... (vi) less any amount included in the federal taxable estate pursuant to IRC §2044 (inclusion of amounts for which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005."

Under the amended regulations, DoR would now include in the "Washington taxable estate" any pre-enactment federal QTIP trust property. In essence, DoR is seeking to retroactively apply the amended regulation to *all* estates of decedents who died after May 17, 2005.

**Impact of the Amended Regulations.** The application of these amended regulations will lead to bizarre results. Consider the following three scenarios as examples:

**Scenario 1:** The first death occurred before May 17, 2005 (the effective date of the new Washington estate tax). All of the decedent's property was located in the state of Washington, and a federal QTIP election was made to qualify a testamentary trust for the marital deduction.

**Scenario 2:** The first death occurred when the couple was living outside the state of Washington holding no Washington property. Because there was no Washington property, no Washington estate tax return was filed and no Washington state QTIP election was made. The surviving spouse moves to Washington, and dies after May 17, 2005. Before the second spouse died, all property owned by him or her (as well as the marital trust, including the marital trust property subject to the federal QTIP election) became Washington property.

**Scenario 3:** The decedent's spouse previously made an *inter vivos* gift to a federal QTIP trust. A federal QTIP election was made on the federal gift tax return. Because there is no Washington gift tax, no Washington state QTIP election was made.

The amended regulations really address only Scenario 1. The amended language leaves the pre-enactment federal QTIP property in as part of the "Washington taxable estate." DoR therefore contends that the property is subject to the Washington estate tax.

The effect of the amendment under Scenario 2 is quite strange. The amended regulation includes the federal QTIP property in the Washington taxable estate if the first spouse died before May 17, 2005, but removes that property from the Washington taxable estate if the first spouse died after that date. In the latter case, the first spouse, as a non-resident, would not have filed a Washington estate tax return, or made a Washington QTIP election. Accordingly there would be no Washington state QTIP to cause inclusion of the property in the Washington taxable estate, regardless of when the surviving spouse died.

The effect of the amendment under Scenario 3 is even more bizarre. If the QTIP trust is created by gift, its value would be included in the federal taxable estate of the donee spouse under IRC § 2044, but under the original regulations to the Washington estate tax it would not be included in the Washington taxable estate. This is because no Washington state QTIP election was made, Washington having no gift tax. Read literally, the amended regulations would require inclusion of property in an *inter vivos* QTIP trust in the Washington taxable estate of the donee spouse only if (1) the donor spouse predeceased the donee spouse, and (2) the donor spouse died before May 17, 2005. Note that it would be the date of the donor spouse's *death* (if he or she had, in fact, died), not the date of the gift, which would control.

**Grounds to Challenge the Regulations.** Applying Washington's new estate tax legislation and regulations to pre-enactment QTIP trusts should be invalid for several reasons. Some of these are:

By seeking to apply the Washington estate tax to pre-enactment federal QTIP property for which no Washington state QTIP election was made, DoR seeks to impose an unconstitutional retroactive tax on estates. The legislation itself states that "this act applies prospectively only and not retroactively," undoubtedly because a retroactive tax is unconstitutional.<sup>21</sup> Imposing the Washington estate tax on property held in QTIP trusts established before the tax's enactment violates the impairment clauses of both the U.S. and Washington State Constitutions.<sup>22</sup> It also violates the Due Process Clause of the Fourteenth Amendment of the Federal Constitution and Article I, Section 3 of the Washington State Constitution.<sup>23</sup>

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*Litigating the Department of Revenue's Estate Tax Regulations... from previous page*

The estate tax is to be imposed upon "every transfer of property located in Washington." RCW 83.100.040(1). The U.S. Supreme Court has held that the rights of the beneficiaries of a trust come into existence at the time the trust is established. Accordingly, the only "transfer" that occurs with regard to a QTIP trust occurs when the QTIP trust is created.<sup>24</sup> Since there is no transfer at the death of the surviving spouse, it is not subject to tax under the Washington statute.

The 2005 Washington state estate tax act may itself be unconstitutional under Article II, Section 19 of the Washington State Constitution. That section requires that the subject of the bill be expressed in the title.<sup>25</sup> The purpose of the subject-in-title rule is to give legislators and the public adequate notice of rights and liabilities contained in proposed laws. The title of Chapter 514, Laws of 2005, is "generating revenue to fund education." The title indicates nothing of the actual substance and scope of the bill — to impose a new stand alone state estate tax. No person reading the bill's title would reasonably conclude that the state intended to impose such a new tax. As such, Chapter 514 violates the subject-in-title rule because its title fails to give any notice of the bill's contents.

**Procedures for Challenging the Regulations.** There are two approaches to challenging DoR's estate tax regulations: deficiency proceedings and refund proceedings.

Where DoR has determined that there is a deficiency because not enough estate tax has been paid, the new state estate tax act sets out procedures for resolving the deficiency. DoR must first file "findings" with the probate court after which the clerk of the court gives notice of the findings to all interested parties.<sup>26</sup> Interested parties have 60 days to object and have the matter addressed at a hearing or trial.<sup>27</sup> The proceedings are governed by TEDRA, RCW 11.96A.180-200. DoR's findings are presumed correct, and the taxpayer bears the burden of showing otherwise.<sup>28</sup>

For a refund case, where the estate has paid the estate tax and seeks to have it refunded, the statute is less clear. RCW 83.100.130(5) refers to an "application" for a refund to be filed by the estate on a "form prescribed by the Department." No such form exists. DoR has suggested that the estate tax return is the application for refund. The statute provides that "no refund should be made for taxes...paid more than four years prior to the beginning of the calendar year in which the refund application is made."<sup>29</sup> In at least one case, DoR has argued that once a request for refund is denied, the Washington Administrative Procedures Act ("APA") provides that any action for judicial relief must be filed within 30 days thereafter.<sup>30</sup> It is not clear what event DoR will argue triggers the 30-day period. Nor is it clear

how DoR will argue that it is entitled to rely on the APA's 30-day statute of limitations when it has complied with none of the other adjudicative provisions of the APA in its enforcement of the Washington state estate tax. Suffice it to say, an estate seeking a refund and wishing to avoid arguments about the APA will want to file its lawsuit against DoR immediately after receiving any indication that DoR intends to deny the estate's refund request.

**Pending Litigation.** Three deficiency cases challenging DoR's application of the amended regulations to pre-enactment federal QTIP property are now pending in King County Superior Court. Those three estates, including the Bracken Estate, have been consolidated for purposes of challenging DoR's findings and are scheduled to go to trial in October of this year. There likely are other cases pending in which these issues are being litigated with DoR.

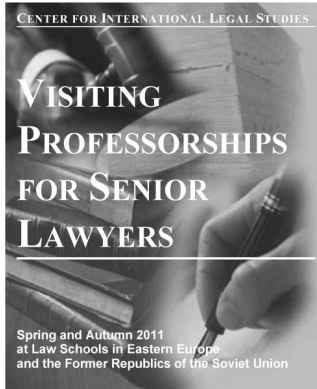
1 IRC § 2056 allows a decedent's federal taxable estate to be reduced by an amount equal to the value of property passing to a decedent's surviving spouse in a qualified manner. 26 U.S.C. § 2056(a). To qualify certain kinds of trusts for the marital deduction an election has to be made by the decedent's executor on the decedent's federal estate tax return (a "QTIP election"). 26 U.S.C. § 2056(b)(7). If a federal QTIP election is made, the property subject to that election is treated as passing to the surviving spouse and can be deducted from the decedent's federal taxable estate. Property for which a federal QTIP election is made then becomes a part of the surviving spouse's federal taxable estate. 26 U.S.C. § 2044.

2 RCW 83.100.040(1).

3 Washington law allows a decedent's Washington taxable estate to be reduced by an amount equal to the value of property passing to the decedent's surviving spouse. RCW 83.100.047. An irrevocable Washington QTIP election is made by the decedent's executor with respect to property that transfers at the decedent's death and in which the decedent's surviving spouse has a qualifying interest for the remainder of his or her life. RCW 83.100.047; WAC 458-57-115(2)(c)(iii)(B). If a Washington QTIP election is made, the property subject to the election is treated as passing to the surviving spouse and can be deducted from the decedent's Washington taxable estate. RCW 83.100.047; WAC 458-57-115(2)(c)(iii). Property for which a Washington QTIP election is made becomes part of the surviving spouse's Washington taxable estate. WAC 458-57-115(2)(c)(iii)(B).

4 RCW 83.100.200.

5 WAC 458-57-105.



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| <p>6 Initiative Measure 402, Laws of 1981, 2d Ex. Sess., ch. 7 (codified in part at RCW 83.100.030(1), repealed by Laws 2005, ch. 516 § 17).</p> <p>7 <i>Estate of Hemphill v. Dep't of Revenue</i>, 153 Wn.2d 544, 547, 105 P.3d 391 (2005).</p> <p>8 <i>Id.</i></p> <p>9 Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (2001).</p> <p>10 <i>Estate of Hemphill v. Department of Revenue</i>, 153 Wn.2d 544, 551-52 (2005).</p> <p>11 <i>Id.</i></p> <p>12 Laws of 2005, ch. 516, §20; RCW 83.100.040(3).</p> <p>13 RCW 83.100.047.</p> <p>14 WAC 458-57-115(2)(c)(iii)(B).</p> <p>15 RCW 83.100.200.</p> <p>16 The rules relating to Washington's estate tax are legislative rules, having been enacted at the express direction of the state legislature. As such, and as the agency that created these rules, they are binding on DoR. <i>Ass'n of Wash. Bus. v. Dep't of Revenue</i>, 155 Wn.2d 430, 446, 120 P.3d 46 (2005); <i>Ritter v. Bd. of Comm'rs</i>, 96 Wn.2d 503, 637 P.2d 940 (1981).</p> | <p>17 WAC 458-57-105(3)(q).</p> <p>18 WAC 458-57-105(3)(q)(v).</p> <p>19 WAC 458-57-105(3)(q)(vi).</p> <p>20 WAC 458-57-105(3)(q) and 458-57-115(2)(d).</p> <p>21 Laws of 2005, Ch. 516, § 20.</p> <p>22 United States Constitution (Art. I, § 10); Washington State Constitution (Art I, §23.); <i>Coolidge v. Long</i>, 282 U.S. 582, 51 S. Ct. 306, 75 L. Ed. 562 (1931); <i>In re McGrath's Estate</i>, 191 Wash. 496, 507-10, 71 P.2d 395 (1937).</p> <p>23 <i>Coolidge v. Long</i>, <i>supra</i> at 595-6.</p> <p>24 <i>Id.</i> at 597-8.</p> <p>25 Wash. Const. Art. II, Sec. 19; <i>Amalgamated Transit Union Local 587 v. State of Washington</i>, 142 Wn.2d 183, 206, 11 P.3d 762 (2000).</p> <p>26 RCW 83.100.150 &amp; 160.</p> <p>27 RCW 83.100.180.</p> <p>28 RCW 83.100.190.</p> <p>29 RCW 83.100.130(3).</p> <p>30 RCW 34.05.542.</p> |
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## More than a Name: Lessons from Grandad

By Frances LeSourd Dewing

*Editor's note: In her day job, "Life Begins" editor Carole Grayson directs UW Student Legal Services. [www.depts.washington.edu/slsuw](http://www.depts.washington.edu/slsuw). Among her law student employees is Frances LeSourd Dewing, a Rule 9 legal intern and a member of the UW School of Law class of 2010. Carole asked Frances to write about life with her grandfather – centenarian lawyer Francis LeSourd, UW School of Law class of 1932. Francis was profiled in the Washington State Bar News in August 2009 and in UWLaw in fall 2008.*

For the first ten years of my life, I hated my name. Frances. It was a boy's name, and substituting an "e" for an "i" didn't change that in my mind. The only other Fran I knew was my "Grandad" (as my family spells it), my father's father after whom I am named. Francis and Frances. I resented being named after a man who was my senior by more than 70 years. But I would soon grow to love that name and the legacy of the great man who gave it meaning (*who lived it*).

My parents, my younger sister, and I moved in with Grandad around the time when I was still sulking my way through junior high school. Until then, Grandad's house was only a place we would visit every few months, and Grandad was only my gentle, polite elder whom I knew little about. Now, his house would be our home, and he would become one of the greatest role models in my life.

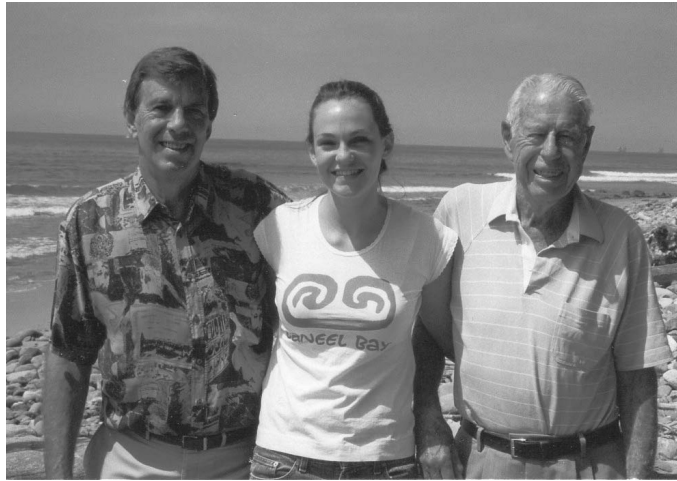
As a teen and into young adulthood, I began to look for strands of Grandad in myself, and I realized that this name, and this man, had shaped my vision of the person I want to be. Even now, at 101 years old, he is dignified and inspiring, with a mind that is truly a natural wonder. It is an honor to carry on his name and try, humbly, to fill his shoes.

### Balance

One of the more revealing facts about Grandad is the consistency between who he is as an attorney and who he is as a person, a grandfather, a father, and a friend. He lives by the same morals and personal maxims regardless of what part he plays. It is this stable, genuineness of character that is cherished by those who know him, both in and outside of the legal profession.

One adage that Grandad relates to me frequently is "everything in moderation." Grandad is a perfect example of someone who lives a life of balance. His meals include

just the right portions of every food group, allowing for dessert as well. Even during his busy years of firm practice, he always made time for family and personal hobbies. Throughout his whole life he always got plenty of exercise through his love of dancing, swimming, and skiing. Keeping all the aspects of one's life in equilibrium is a task in itself, but Grandad seems to do it naturally.



Frances LeSourd Dewing is flanked by her grandfather, Francis LeSourd, and her father, Chris LeSourd (brother of former Seattle attorney Peter LeSourd).

And his personality seems to follow in parallel, demonstrating a balance of character. Grandad is polite yet opinionated; open-minded yet practical. He takes life as it comes and retains the flexibility to adjust to everything from new technology – he sent his first email at age 93 – to new socio-cultural view points. His opinions, political or otherwise, are always rooted in common sense and reasonableness. A true believer in the ideals of justice and equality, Grandad dedicated himself to civil rights decades before the national movement began.

Grandad seems to hold no prejudices, not even within his family, and he has always been careful never to favor one child or grandchild over another.

### Life, Love, and Law

I am convinced that the qualities that make Fran LeSourd a great grandfather are also his aptitudes as an attorney. At family gatherings, he is always the center of the room, his progeny begging to hear his amazing stories. But despite his local legendry, Grandad is humble and praises others more than himself. Similarly, he was known as unpretentious, gracious, and cooperative in the courtroom, an advocate of camaraderie within the profession. During trials, Grandad exuded confidence and authority, without needing to raise his voice or put on a show. His years of measured and purposeful practice have helped him continue, at 101, to make deliberate and careful movements.

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*More than a Name: Lessons from Grandad* from previous page

It's not so surprising that the things that Grandad loves about the practice of law, he also loves about life generally. He was always intrigued by the "human psychology" aspect of law. He takes a true interest in people and their stories, thriving in situations with client interaction. Similarly, he is genuinely interested in each of his kids and grandkids as individuals. He encourages all of us to follow our own paths and hone our unique talents, never herding us down *his* life's route. Perched on the porch in the shade, smiling at his own memories of youth, Grandad finds a simple joy in watching his grandkids play.

He tells me, "The law is always interesting, always something new, and no case is ever the same. Even in tax

law, if you can believe it." Grandad has an insatiable love for continued learning. He is a perpetual reader, and seems to be reading a new book every time I visit him. "I always loved the clash of wits," he says to me, referring to the on-your-feet competition of a trial. But I've also heard him use that phrase when speaking about the days when he used to race sailboats competitively. In his living room, he has a shelf lined with trophies earned in local boat races, some lasting several days. He tells me his secret: After anchoring for the night, he and his crew would sacrifice sleep and creep out of their beds before the sun was up. They would quietly let out their lines and catch the first breeze that comes up with the sun in the morning. They would sneak out of the harbor while the other boats still slept, and get a head start on that slow morning wind. Grandad has always been a good-natured competitor, on the water and in the courtroom.

**One Day at a Time**

"But most importantly, do something you love." He looks me in the eyes when he says it, and I know he thoroughly enjoyed everything he chose to dedicate his life to. Coupled with his passion for the practice of law, Grandad made sure to "make time for life." Grandad wrote poems about the things he loved in life: his wife, his children, music, sailing, and hiking the Cascade Mountains (he writes, "tramp the Cascades 'til I die"). His gift for brief writing even suggests undertones of a poetic inclination. His favorite pastime was ballroom dancing, which he continued weekly until well after his 90<sup>th</sup> birthday.

Despite the value of a traditional legal education, Grandad has taught me things more fundamental to law than courtroom tactics and elements of a crime. Take risks. Stay true to yourself, your morals, and keep your integrity. Live a life of appreciation and gratitude. Do what you love. Grandad continues to be appreciative of people and amazed by the world. His enjoyment of both the ordinary and extraordinary fills him with an energy far younger than his 101 calendar years. And his secret to longevity? Grandad LeSourd says, "Take it one day at a time."

**2009-2010**

**Senior Lawyers Section**

[wsba.org/lawyers/groups/seniorlawyers](http://wsba.org/lawyers/groups/seniorlawyers)

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## 1959: A Moment in Time

Program from the WSBA October 2009 50-Year Luncheon

The year is 1959. The average salary is \$5,016, but unemployment is 6.8 percent. The average house costs \$30,000; a postage stamp is 4 cents; a loaf of bread costs 20 cents; and a gallon of gas is still just a quarter.

New products in stores include the Bic ballpoint pen, the Barbie doll, Jiffy Pop, and pantyhose. Amazingly, the billionth can of Spam is sold, and Coors introduces the aluminum beer can this year. Notable inventions in 1959 include the internal pacemaker and the Ski-Doo snowmobile.

In January, Alaska is admitted as the 49th state, and in August, Hawaii becomes the 50th. Hawaii's first election sends the first Asian Americans to Congress.

The space race continues as *Luna 2* is launched by the U.S.S.R. and becomes the first spacecraft to impact the Moon. The *Luna 3* sends back the first photos of the Moon's far side; 1959 also sees the first color photograph of Earth from outer space. In the United States, the "Mercury Seven" astronauts are chosen for Project Mercury. Also this year, the United States sets the record for the first astronauts to successfully return to Earth after traveling in space — monkeys, that is. Able, a seven-pound female rhesus monkey, and Baker, a one-pound female squirrel monkey, are launched into space in the nose cone of Jupiter Missile AM-18 for a 15-minute space flight.

The Guggenheim Museum, designed by Frank Lloyd Wright, opens in New York. The iconic building, Wright's last major work, was controversial at the time, although today it is admired as one of the twentieth century's most significant architectural landmarks.

Severo Ochoa and Arthur Kornberg win the Nobel Prize in Physiology/Medicine for their discovery of the mechanisms in the biological synthesis of ribonucleic acid and deoxyribonucleic acid, or DNA.

The Pulitzer Prize in fiction is awarded to *The Travels of Jaimie McPheeters* by Robert Lewis Taylor. Other popular books published this year include *Flowers for Algernon*, *A Separate Peace*, and *Goldfinger*.

"Rawhide," "Bonanza," and "Twilight Zone" all debut on TV this year. Charles Van Doren confesses that the quiz show "21" was fixed. On the air, you'd find 3,287 AM radio, 578 FM radio, and 509 TV stations.

*Ben-Hur* becomes the first movie to win 11 Oscars, including Best Picture and Best Actor. Budgeted at \$15 million, it was the most expensive film of its time. Simone Signoret wins Best Actress for *Room at the Top*. Other movies this year include *Some Like It Hot*, *The Diary of Anne Frank*, and *Pillow Talk*.

The first televised Grammy Awards takes place this year, and Bobby Darin wins Record of the Year for "Mack the Knife." Frank Sinatra wins Album of the Year for "Come Dance With Me," and Ella Fitzgerald wins Best Female Vo-

cal Performance. Tragically, a plane crash in February kills singers Buddy Holly, Ritchie Valens, and J.P. Richardson (The Big Bopper).

In sports, the American Football League (AFL) is formed with eight teams: the Boston Patriots, Buffalo Bills, Dallas Texans, Denver Broncos, Houston Oilers, Los Angeles Chargers, New York Titans, and Oakland Raiders. In the late 1960s, it will merge with the NFL. The Baltimore Colts win the NFL Championship 31-16 over the New York Giants. The San Francisco Giants officially name their new stadium Candlestick Park. The Los Angeles Dodgers win the World Series 4 games to 2 over the Chicago White Sox. Lee Petty wins the first-ever Daytona 500 auto race.

### In Washington...

In February, construction begins on the Howard A. Hanson Dam. Located 35 miles southeast of Seattle in Eagle Gorge on the Green River, it will take three years to build. It is named for Howard A. Hanson, a Seattle attorney and long-time promoter of flood control in the Green River Valley.

In April, the city of Lynnwood in Snohomish County incorporates and holds its first city council meeting. The new municipality encompasses three square miles that lie northeast of Edmonds, north of Montlake Terrace, and east of Alderwood Manor. It has a population of approximately 6,000.

In March, a crewless, runaway 15-car train strikes the Union Pacific Depot in downtown Olympia with such force that it goes through the building and crosses 4th Avenue, destroying half a city block. One man is killed and 20 people are seriously injured. Property damage exceeds \$250,000. The cause of the accident is quickly traced to the train crew's failure to properly set brakes on the cars and subsequently leaving the train unattended.

In the spring of 1959, pioneering cardiovascular surgeon Lester R. Sauvage establishes the Reconstructive Cardiovascular Research Laboratory, precursor to the Hope Heart Institute, in Seattle. Sauvage and others working at the facility will make important contributions to the development of coronary artery bypass surgery, now the most common type of operation performed on the heart.

On July 6, four prisoners attempt an escape from the Washington State Reformatory in Monroe by overpowering three guards and taking the guards, 26 visitors, and 11 inmates hostage. The prisoners, armed with long kitchen knives and sharp meat forks, sequester the hostages in the visitors' room and demand a getaway car and safe passage to Canada. After nearly 14 hours of negotiations, the situation is resolved when guards wearing gas-masks flood the

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room with tear gas, storm in, and subdue the rebellious inmates. Although shaken, none of the hostages is injured.

In September, the final phase of the 3.8-mile long Alaskan Way Viaduct and Battery Street Subway project is opened to traffic. Constructed in three phases during the 1950s, the viaduct and tunnel are intended to alleviate traffic problems along Seattle's waterfront and through the downtown area.

Although the viaduct is widely hailed as the solution to the traffic problem, by the 1970s it will itself be considered a problem: both an eyesore to the Seattle waterfront and unable to withstand a major earthquake.

**And at the WSBA...**

In January 1959, 34 people pass the bar exam. Compare that to February 2009, when 309 candidates passed the bar exam. In July 1959, 77 people pass the bar exam. In July 2009, 626 passed the bar exam.

The Washington State Bar Foundation, incorporated in the preceding year, has raised more than \$1,000 in a fund to purchase a building to serve as WSBA offices. The Board of Governors calls upon every lawyer in the state, "which means every member of the State Bar Foundation," to contribute toward the acquisition of property for the WSBA headquarters.

Attorneys who are interested in aviation law, or who are pilots, are invited to attend the first-ever national meeting of the "Legal Eagles" in New York. The organizer, a New Jersey lawyer, noted, "There already are 'Flying Physicians,' 'Flying Farmers,' and others who are keenly interested in aviation and can connect their hobby with their profession."

In September, the "most successful convention in the history of the WSBA" is held, with more than 900 members in attendance — over 25 percent of the membership. The event, hosted by the Spokane County Bar Association, includes "a full program of extra-official activities for members and their wives, including about 750 home dinners," as well as a Hawaiian buffet at the Spokane Country Club and a fashion show and luncheon at the Spokane City Club.

**Today we honor you...**

You, the members of the WSBA class of '59, have seen many changes — cultural, political, and societal — during your years in the legal profession. We hope you enjoy celebrating your 50 years of membership in the Washington State Bar Association, as you gather here today with friends and colleagues to share stories and memories. Your achievements and dedication are an inspiration. You have served our profession and our community for 50 years, and have made us all proud to be lawyers. We salute you and we thank you.

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## 2009 50-Year Member List

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3. Mr. William Frederick Baldwin, Wenatchee
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6. Mr. Richard A. Bromley, Alamo, CA
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## Where In The World Is Tuva? Why Would You Want To Go There?

By Steve DeForest

Very few tourists visit Tuva. It is naturally closed off to the rest of the world by mountain ranges. It should be no surprise, therefore, that its tourist infrastructure is largely non-existent. Two summers ago, my wife and I attended the Fifth International Symposium of Khoomei (“throat singing”) in Kyzyl, Tuva, in southern Siberia. We first learned about Tuva and its throat singers two years ago when we attended a program at MOHAI in Seattle, where a quartet of touring women throat singers performed. We were intrigued and wanted to know more about this distant country and its culture.

Traveling to Tuva, as we soon found out, requires a willingness to endure a long trip. Our tour leader recommended going via Moscow, even though a look at a map of the world indicated that fewer time zones would need to be crossed if we were to fly west from Seattle. Getting across the Pacific would have been easy, but from there to Tuva would have been difficult and time-consuming. There are only two roads that cross the Tuvan border, and the one from Mongolia is closed due to a territorial dispute. There is no railroad into Tuva.

### Green Natural Landscape, Formerly Red Political Landscape

So, eastward we headed. We awoke at 4:45 a.m. on a Monday morning, boarded an 8:25 American Airlines flight to Chicago, and then continued on American Airlines from Chicago to Moscow, arriving on Tuesday about noon, Moscow time. Moscow has three airports. We flew into Domodovo Airport, and then transferred to Vnukovo Airport, with too much time on our hands: 10 hours. Following an overnight flight, the waiting was exhausting. We boarded an Air Vladivostok Russian-made jet about 10:30 p.m., while it was still light, for an overnight flight to Abakan, the capitol of Khakassia. The five-hour flight crossed four time zones, arriving in Abakan about 7:30 a.m. local time (3:30 a.m. Moscow time).

We were now beginning to feel trashed, but our journey was not over. A taxi to take us to Kyzyl had been arranged, but because one of our group members had missed his connection out of New York, there were only three of us for

the taxi, which resulted in an extended, negotiated increase in the fare. The 420 km five-hour drive from Abakan to Kyzyl was through a verdant green landscape, followed by climbing a forested mountain pass, and descending through semi-arid land to Kyzyl, arriving 1:30 p.m. local time on Wednesday.

The Republic of Tuva is located on the northwest corner of Mongolia. The Tuvan people have lived here for many centuries in isolation from their neighbors because of the mountain ranges on its borders. In its more immediate past,



A ger (yurt) in the Tuvan landscape. Tuvans were historically a nomadic people, and some Tuvans still migrate with their animals on a seasonal basis.

Tuva was twice annexed by Russia: In 1914 Russia proclaimed Tuva a protectorate, and in 1944 it became an administrative unit of the USSR, and its borders were sealed. Tuva is now a semi-autonomous republic and a member of the Russian Federation, founded after the collapse of the Soviet Union in 1991. Tuva has its own constitution, president, and parliament. However, its foreign affairs are conducted by Russia. A prerequisite for obtaining a Russian visa from the Russian consulate

in Seattle was a letter of invitation from a Tuvan official. Although we carried Russian visas, we were required to register upon arrival in Kyzyl and each time we moved within Tuva for more than 3 days, a requirement that was time-consuming and seemingly without purpose, except as a bureaucratic legacy of the Soviet Union. Tuva has no military or national guard, but does have its own police and intelligence service. Tuvans speak both Tuvan and Russian, the latter a requirement in the schools.

### A Boiler? During the Summer?

Tuva encompasses an area that is a little larger than the state of Washington. Its population is about 300,000, with one-third living in the capitol city of Kyzyl. 70% of the population is Tuvan; the balance are from 10 other countries, mostly Russian republics and protectorates. Contrary to our preconception that Tuva would be essentially an extension of the Mongolian steppes, the topography of Tuva offers almost every type of landscape: luxuriant grasslands, boundless steppes, rushing mountain streams, dusty semi-deserts,

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over 400 lakes, and mountains up to 13,000 feet. The Sayan Mountains in southwest Tuva are the source of the tributaries that become the Yenisei, one of Siberia's major rivers as it flows over 2,000 miles north to the Arctic Ocean. The climate in the summer is very hospitable: low 80's during the day, cooler at night, with occasional rain showers. The winter is very long and bitterly cold, with temperatures as low as minus 45-50 degrees (Celsius).

Kyzyl was founded in 1914, at the confluence of two branches of the Yenesei River. It appeared to us to be as wide as the Columbia River at Wenatchee, and very swift, as no dams impede its progress. The City bears many signs of its Russian "occupation": wide, tree-lined streets in the center core which are crumbling; deteriorating buildings; and abandoned factories to which political dissidents were banished in the Stalinist era.

Our tour leader assured our group of eight (five Americans, two Norwegians, and one Canadian) that the Hotel Odugen, in which we were being accommodated in Kyzyl, was the best hotel in the country. Located directly across the street was a large building formerly housing the KGB and now used by the Tuvan intelligence service. Upon our arrival at the hotel, there was no hot water. We were not alone. All of Kyzyl is supplied by a central boiler, which is shut down every July for maintenance. Our room had two single built-in beds. The mattress was firm. Oddly, the bottom sheet was too short, leaving about 6 inches of the mattress exposed at both ends of the bed. There was no top sheet, just a quilt. Boris Yeltsin reportedly stayed here, and the Dalai Lama more recently.

**"Khoomei" and Natural Harmonics**

Tuva is best known for its throat singing which it actively promotes, both as a cultural tradition and as a possible tourist draw. In throat-singing ("khoomei"), a single vocalist can simultaneously produce two or more distinct pitches, by selectively amplifying harmonics naturally present in the voice. There are a number of throat-singing techniques, dictated by careful positioning and movement of the tongue, lips and jaw. These control pitch, timbre and (in one case) suppression of harmonic overtones. Also necessary is a tightening of throat muscles to restrict the fundamental lower tone. The styles include basic khoomei, sygyt, borbangy and kargyraa.

It is amazing to watch a throat-singer. He or she will evidence substantially the same facial movement as an ordinary singer. Outwardly there is no sign that the vocal cords are being constricted, and many of the vocalists have a serene appearance. In 1995, a blind American bluesman, Paul Pena, traveled to Kyzyl and participated in the first khoomei symposium, where he placed first in the kargyraa category. This journey was the focus of the documentary *Ghenghis Blues*. Pena died in 2005.

The opening event of the Symposium was a concert in the Performance Hall in Kyzyl. What a surprise! The music was varied and intriguing, the costumes colorful and elaborate, their hats with pointy tips, topped by a satin knob, and the choreography graceful.



Tuvan throat singers performing on the steps of the Performance Hall in Kyzyl

The packed hall frequently reverberated with applause of the audience. The next afternoon we attended in the same venue a competition among throat-singers, some of whom accompanied themselves on indigenous stringed instruments. The contestants were all in their native dress, and performed either as a soloist or as a duet or quartet. There were about

100 singers. Nearly all were Tuvans; several Japanese, a Swede, Mongolian, two Finns, and one American also competed.

**VIP Treatment**

Two days later we returned to the Performance Hall for the concluding concert, at which the winners of the competition in various categories were announced. Each received a bouquet of roses and a plaque. Excitement peaked as the grand prize winner was announced and received a new car. Thereafter each of the winners performed. It was an unforgettable evening.

Because very few "foreigners" attended this International Symposium, we received special treatment, including preferred seating at the concerts and interviews by the local press, both print and radio. We also marched in a parade with some of the khoomei singers and visitors from a number of countries. At the head of the parade were 15 shamans in full regalia. Each delegation bore a sign with the name of their country in Cyrillic. The parade route to the central square was lined with Tuvans. Another perk we enjoyed as international guests were two catered, elaborate dinners with entertainment at the Cultural Center. Finally, when

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we were driven to a nearby sacred spring and a national monument to the Tuvan “cowboy” about 20 miles outside of Kyzyl, we had a police escort.

Religion in Tuva, a mixture of Buddhist and the shamanist beliefs of its people, is experiencing a strong revival after suppression by the Soviets. Stupas have been constructed in Kyzyl as well as in villages, and the Dalai Lama’s picture is often found along with small shrines in yurts. Shamanism goes back to animism, a belief in the presence of spiritual qualities in objects of the natural world. It is an integral part of the daily life of Tuvans. Before we left for the Bai Taigra area in western Tuva, we stopped at the home of a shaman to receive a blessing for our trip. This was the first of many shamanistic rituals.

### Shamans and Scythians

Over the next six days we were required to participate in at least four such rituals, and closely observed an equal number. The shaman, male or female, is dressed in a long garment adorned with eagle feathers, bells and fetishes. After prolonged chanting and rhythmic drumming, often shaking a lighted juniper branch, the shaman goes into a trance to communicate with spirits, be they of the mountains, rivers or fire.

At each holy spring we visited, our Tuvan translator led us counterclockwise three times around the sacred object. We each were given a symbolically significant colored strip of cloth to tie on a branch to honor the local spirits. Shamans are said to possess healing and prophetic powers, and several in our group sought relief from various ailments, or guidance on their future, in individual sessions with a shaman who camped with us at one of the campgrounds.

After the Symposium ended, we took a two-hour drive to a day-long event featuring bareback riding on an 18-mile course, and many hours of a wrestling competition. Both are highly popular sports in Tuva. The winner received a sheep, and the runner up was awarded a goat. Lunch was provided in a yurt that had been erected at the site. We sat on the floor, or kneeled (to the extent the knees were willing) and sampled a variety of Tuvan foods.

This event was at a site known as the Valley of the Kings, because of the large number of burial mounds. Over a period of several years beginning in 2001, archaeologists uncovered over 30,000 pieces of gold jewelry and relics that have been attributed to the Scythians prior to the sixth

century B.C. They are being stored in the Hermitage Museum in St. Petersburg until a museum can be constructed in Tuva.

### Following the Seasons

The next day we left Kyzyl on a 420 km drive to an area known as Bai Taigra, a Siberian word which means coniferous forest. Pines, larches and birches predominated. It is also where Tuva’s traditional lifestyle of semi-nomadic pastoralists and herders is still practiced, moving their herds out from their villages to summer pastures where they live in yurts. The range of animals they herd reflects Tuva’s geographical diversity: camels, yaks, cows, horses, goats, sheep, and even reindeer in the eastern forests.

Packed into a mini-van with our 8-member group were our tour leader, a Tuvan translator, a highly respected teacher of throat-singing, and the Director of Humanitarian Research Center in Kyzyl and the co-author of a book on khoomei. Our first two nights were spent in a private home in Teeli: 12 of us in three bedrooms, the host family having moved out to a yurt in their dirt courtyard. Then two nights camping at Arjaan Shivilig. In translation arjaan means “saint water, mineral water, curative spring.” Cold spring water is piped to small primitive shower stalls. We were asked to spend not more than three minutes in the shower. This was not a problem. The water was very cold!

We returned to Kyzyl for one night (the hot water was back on), before driving to another holy spring campground (Argolic Springs), for another two nights in the tent, which we had brought from Seattle, cold showers, and short walks in the surrounding area.

At the end of two wonderful weeks, we were ready to return home. Pillow to pillow time on the return: 56 hours. Was it worth it? You bet! The scenery had been awesome, the weather cooperative, the sanitation questionable (there are no flush toilets outside of Kyzyl), and the food ... well, you don’t go to Tuva for its food, unless cabbage soup, potatoes, tough mutton, and dry bread are among your favorites. Tuvan wine is distilled from sour milk. Taste? Let’s just say it is a little raw. The highlights were the khoomei concerts, with the astounding variety of throat singing techniques and the beautiful costumes of the performers. It was a memorable experience, and one that rates very high on our list of trips taken to new places.



Center of Asia monument in Kyzyl, the capital of Tuva

## Are you thinking of changing your WSBA membership status?

### Consider Emeritus.

#### **Annual WSBA Training and Orientation: January 12, 2010**

As the 2010 WSBA licensing period is here, you may be thinking of changing your membership status to accommodate your current career or lifestyle. If you no longer need your active WSBA license, here's why you should consider Emeritus status.

APR 8(e) creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law, to practice pro bono legal services through a qualified legal services provider. A qualified legal services provider is a "not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients." There are no MCLE requirements (although you may attend optional CLE seminars at no cost so that you are aware of changes in the law). The 2010 license fee for Emeritus is \$200. This is a significant savings in time and money if you are paying for an active license that you no longer need. Under most circumstances Emeritus attorneys can remain in Emeritus status indefinitely without having to re-take the bar exam if/when returning to active status. Most qualified legal services providers provide malpractice insurance for Emeritus volunteers. There is no age requirement for Emeritus attorneys. Volunteering for a "qualified legal services organization" allows you to control your own schedule. Most importantly, the Emeritus program provides an opportunity for attorneys to give something back to their communities by helping those who are less fortunate.

One or more qualified legal service organizations are present in most Washington state counties. They include Columbia Legal Services, a statewide legal services program; Northwest Justice Project, a central statewide point of access for clients; specialized legal services programs (such as Unemployment Law Project and Northwest Immigrant Rights Project); and county volunteer attorney programs.

These organizations offer a wide variety of volunteer opportunities such as direct representation, mentoring, advice clinics, self-help clinics, board membership, telephone advice and document preparation. Emeritus also allows for pro bono services for criminal cases through some public defender agencies. Many of these organizations offer training for their volunteers. We will do our best to find a niche to fit your legal expertise, interest and schedule.

An Emeritus training and orientation session is scheduled for **Tuesday, January 12, 2010**, in Seattle at the

WSBA offices. This training is a requirement for changing to Emeritus status and will provide an opportunity for you to meet representatives from qualified legal services providers. Travel expenses will be reimbursed. For more information about the Emeritus program, registration for the training session and the logistics of changing your WSBA status to Emeritus, please contact Sharlene Steele, WSBA Access to Justice Liaison at 206-727-8262 or [sharlene@wsba.org](mailto:sharlene@wsba.org). You can review APR 8(e) at <http://www.wsba.org/lawyers/licensing/faq-rule8e.htm>.

### **WSBA Emeritus Status**

**Are you paying** for your "Active" WSBA license but not practicing much these days?

**Are you thinking** about changing your status to "Inactive" for a reduced licensing fee?

**Consider** WSBA "Emeritus" status. Emeritus is a limited license to practice with the same low licensing fee as "Inactive" without the mandatory MCLE requirements.

*For more information please contact Sharlene Steele, WSBA Access to Justice Liaison, at 206-727-8262 or [sharlene@wsba.org](mailto:sharlene@wsba.org).*

## **WSBA Service Center at your service!**

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Yes, it's possible!

Regulation 103(g) of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six (6) hours of credit annually for providing pro bono direct representation under the auspices of a qualified legal services provider.

APR 8(e) creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law, to practice pro bono legal services through a qualified legal services organization.

For further information contact Sharlene Steele, WSBA Access to Justice Liaison, at 206-727-8262 or [sharlene@wsba.org](mailto:sharlene@wsba.org).

## Information for Your Clients

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

Alternatives to Court	Elder Law	Probate
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Dissolution of Marriage (Divorce)	The Parenting Act	Wills

Each topic is sold separately. Pamphlets are \$9 for 25, \$15 for 50, \$20 for 75, and \$25 for 100. Pricing for larger quantities is available on request.

To place your order or for more information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Sales tax is applicable to all in-state orders.

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